

City of Hayward
and
Hayward Police Officers' Association

SIDE LETTER OF AGREEMENT

**Regarding: Cost Saving Measures to Address City Revenue Shortfall
for FY 2013 and FY 2014**

This Side Letter of Agreement is made between the City of Hayward (City) and the Hayward Police Officers' Association (HPOA). This Side Letter of Agreement amends certain provisions of the current Memorandum of Understanding, effective July 1, 2004 and extended on May 8, 2008 by an Addendum through June 30, 2015 (hereinafter referred to as the "2004-2015 MOU"), between the parties regarding bargaining unit salaries, employee's PERS contributions, holidays and payment for holidays worked, duration, retiree health care, detective pay, parental leave, pregnancy and childbirth, safety equipment and uniforms.

The City and the HPOA agree that the terms of this Side Letter of Agreement shall become effective July 1, 2012, unless otherwise indicated herein. The parties also agree that the terms of this Side Letter of Agreement are limited to those specific items contained herein, and that some separate sections of this Side Letter of Agreement expire as indicated herein. Upon expiration of the terms set forth below, the MOU provisions as amended through this Side Letter shall revert to their original terms as set forth in the 2004-2015 MOU unless the original terms have been deleted or altered by the parties in this side letter. No part of this Side Letter of Agreement is intended to contradict the Side Letters of Agreement born of the 2009-2010, 2010-2011 and 2011-2012 fiscal year revenue shortfalls.

1. Bargaining Unit Salaries Effective July 1, 2012

The parties acknowledge the City's anticipated revenue shortfalls for the 2013 and 2014 fiscal years, and in that regard, the parties agree to delete paragraphs six (6), seven (7) and nine (9) (regarding bargaining unit salary adjustments effective the pay period including July 1, 2012 and bargaining unit salary adjustments effective the pay period including July 1, 2013) of Section 2 of the Addendum to the 2004-2015 MOU dated May 8, 2008 and replaced with the following:

Bargaining unit salaries effective the pay period including July 1, 2012 through the last day of the pay period preceding the pay period that includes July 1, 2014 shall not be increased and shall remain at the levels established for the 2010-2011 and 2011-2012 fiscal years. (Replaces paragraphs 6 and 7)

The parties agree to amend Section 2 of the Addendum to the 2004-2015 MOU to provide for the following language for salary adjustments to be effective the pay period including July 1, 2014:

Beginning with the salary survey effective July 1, 2014, "Total compensation" shall mean the top step base monthly salary; employer-paid member PERS contributions; uniform allowance, education incentive pay applicable to all police officers; and the amount the employer pays for premiums for family level health coverage. The amount to be included in the survey for health and welfare benefits for the City of Hayward police officers shall be the amount of the family premium for the health plan in which the plurality of the HPOA members are enrolled. (Replaces paragraph 9.)

The parties agree that Section 2 of the Addendum to the 2004-2015 MOU shall further be amended to read:

Bargaining unit salaries effective the pay period including July 1, 2015 shall be determined according to the above compensation survey, but shall not exceed eight (8) percent. In the event the HPOA agrees to forego a salary increase for FY 2016, and the actual market adjustment as determined by the compensation survey provision in the May 8, 2008 Addendum identifies an increase due that is greater than eight (8) percent, the actual amount identified by the compensation survey shall be used for computing the concession value credited for foregoing the salary increase.

Bargaining unit salaries effective the pay period including July 1, 2016 shall be determined according to the above compensation survey.

All other provisions of the May 2008 Addendum, which have not previously expired or been deleted, shall remain unchanged and increases in compensation effective July 1, 2014 through June 30, 2015 are not modified.

2. Employee's PERS Contribution

For the period including July 1, 2012 through and including June 30, 2014, the following provision shall apply in lieu of Section 8.01 et seq. of the 2004-2015 MOU:

So long as the Employer Contribution Rate required by PERS for FY 2013 is at least 30.000%, and as authorized by Government Code Section 20516 (Optional Benefits, Cost Sharing), bargaining unit members shall be responsible for payment of the nine percent (9%) member contribution plus an additional 8.45% of their salaries to the California Public Employees' Retirement System (CalPERS) as payment of the City's employer contributions that the City would

otherwise be required to pay to CalPERS for these employees; said contribution shall be credited to each member's account as a normal contribution.

So long as the Employer Contribution Rate required by PERS for FY 2014 is at least 30.000%, as authorized by Government Code Section 20516 (Optional Benefits, Cost Sharing), bargaining unit members shall be responsible for payment of the nine percent (9%) employee retirement contribution plus an additional 8.62% of their salaries to the California Public Employees' Retirement System (CalPERS) as payment of the City's employer contributions that the City would otherwise be required to pay to CalPERS for these employees; said contribution shall be credited to each member's account as a normal contribution.

For purposes of the cost-sharing (Gov. Code section 20516) provisions described above, the 30.000% threshold is satisfied when the total of any employer contributions required by PERS and any employee cost-sharing of that employer contribution exceeds 30.000%. The parties agree that the 9% member contribution paid by employees shall not be included as employer contribution.

The City shall continue implementation of Section 414(h)(2) of the Internal Revenue Code.

The City will continue to not treat these contributions as compensation subject to income tax withholding unless the Internal Revenue Service or Franchise Tax Board indicates that such contributions are taxable income subject to withholding. Each employee shall be solely and personally responsible for any federal, state, or local tax liability of the employee that may arise out of the implementation of this section or any penalty that may be imposed therefore."

3. Holiday Pay

2004-2015 MOU Section 9.02 (Payment for Holidays Worked) is deleted effective July 1, 2012 and is replaced by the following:

Employees shall receive 6.73% additional compensation each pay period, calculated on their base pay only, in lieu of being allowed to take paid time off or accrue paid time off for a City holiday.

Except as provided above, an employee who works on a designated city holiday as part of the employee's regular work schedule will not receive any additional compensation based solely on the day's designation as a city recognized holiday. Employees working overtime on a designated city holiday shall be paid at their normal overtime rate and will not receive any additional compensation based solely on the day's designation as a city recognized holiday.

Employees who wish to take any day off will be required to use accrued vacation, holiday and/or compensatory time off.

In the event that the City finds the implementation of this section results in an unanticipated increase in cost to the city, the parties agree to meet and confer on this issue only in January 2014. Any modification to this section shall occur only by mutual agreement of the parties.

4. Uniforms (Effective July 1, 2012 through and including June 30, 2014)

For the period beginning July 1, 2012 through and including June 30, 2014, Section 15.02 of the 2004-2015 MOU shall be amended by the addition of following language and terms:

Bargaining unit members assigned to a uniformed assignment will be allowed to wear their Class C (5.11 TDU) uniform for daily use regardless of weather. This provision would supersede section 1046.3.3 of the current Hayward Police Department Policy Manual governing the "Class C Uniform". Section 1046.3.4 of the Hayward Police Department's Policy Manual governing "Court and Hearing Attire" would not be affected by the terms of this Side Letter of Agreement and would remain in effect. The City agrees to replace/repair Class C uniforms damaged in the line of duty; however, the City is not required to make an initial purchase of Class C uniforms for those members who do not currently own them.

5. Vacation Accrual

Paragraph 1 of the Side Letter of Agreement, dated June 21, 2010, regarding vacation accrual is revoked in its entirety and Section 10.02 of the 2004-2015 MOU regarding Vacation Accrual, is amended by the addition of the following language:

Beginning June 24, 2013, the vacation accrual maximums as stated in Section 10.02 of the 2004-2015 Memorandum of Understanding shall be reinstated and no employee shall be allowed to maintain a balance of unused vacation leave in excess of twice his or her annual allowance, subject to the exceptions provided below. Furthermore, beginning June 24, 2013, for any pay period in which an employee's vacation leave balance exceeds the maximum accrual allowance, no additional vacation leave will be earned until the employee's leave balance falls below his or her maximum accrual.

The parties acknowledge that certain employees will have a balance of unused vacation leave in excess of twice their yearly allowance as of July 1, 2012. Those employees shall be granted additional time to exhaust their excess vacation leave balances as follows:

Employees with eighty (80) hours or less of excess vacation leave as of July 1, 2012, must use all their excess time, all their newly earned time, and have their vacation leave balance under the allowable limit not later than June 24, 2013. If, on June 25, 2013, such an employee's vacation accrual balance continues to be in excess of twice his or her yearly allowance, the employee will not be allowed to accrue any additional vacation leave until such time as the employee's vacation leave balance falls below his or her maximum accrual.

Employees with more than eighty (80) hours and less than one-hundred and sixty (160) hours of excess vacation leave as of July 1, 2012, must use not less than eighty (80) hours of the excess vacation leave per fiscal year, all their newly earned time each fiscal year, and have their vacation leave balance under the allowable limit not later than June 30, 2014. If, on July 1, 2014, such an employee's vacation accrual balance continues to be in excess of twice his or her yearly allowance, the employee will not be allowed to accrue any additional vacation leave until such time as the employee's vacation leave balance falls below his or her maximum accrual.

Employees with more than one-hundred and sixty (160) hours and less than two-hundred and forty (240) hours of excess vacation leave as of July 1, 2012, must use not less than eighty (80) hours of the excess vacation leave per fiscal year, all their newly earned time each fiscal year, and have their vacation leave balance under the allowable limit not later than June 30, 2015. If, on July 1, 2015, such an employee's vacation accrual balance continues to be in excess of twice his or her yearly allowance, the employee will not be allowed to accrue any additional vacation leave until such time as the employee's vacation leave balance falls below his or her maximum accrual.

Employees with more than two-hundred and forty (240) hours of excess vacation leave as of July 1, 2012, must use not less than one-hundred (100) hours of the excess vacation leave per fiscal year, all their newly earned time each fiscal year, and have their vacation leave balance under the allowable limit not later than June 30, 2016. If, on July 1, 2016, such an employee's vacation accrual balance continues to be in excess of twice his or her yearly allowance, the employee will not be allowed to accrue any additional vacation leave until such time as the employee's vacation leave balance falls below his or her maximum accrual.

If an employee who makes a timely request is denied permission to use excess accrued vacation as required by the above sections, the City will meet with the employee to reschedule the requested vacation time at a time reasonably mutually agreeable to the employee and the City. The penalty provisions enumerated above shall not be imposed when the use of accrued vacation time has been denied by the City due to no fault of the employee.

6. BENEFIT PLANS

Section 6.01 Paragraph 3 of the 2004-2015 MOU regarding Medical Insurance, is replaced by the following language:

Effective July 1, 2004, the City shall contribute up to \$261.64 per month or the Kaiser North single party rate, whichever is greater, for each active employee, each eligible retired employee who was hired before May 1, 2012, or the eligible survivor of a retiree who was hired before May 1, 2012 who subscribes for coverage.

Effective May 1, 2012, the City shall contribute not more than a total of \$508.30 per month, for each eligible retired employee who was hired on or after May 1, 2012 or to the eligible survivor of a retired employee who was hired on or after May 1, 2012 toward the premium cost of City sponsored health insurance. The City contribution shall not exceed the lesser of \$508.30 or the premium cost, which is either the basic rate or the supplement to Medicare rate, incurred by the retiree or his/her survivor under CalPERS policy and includes any required Public Employees' Medical and Hospital Care Act (PEMHCA) contribution (which is \$112 per month in calendar year 2012).

7. SALARY ADMINISTRATION

The parties agree to add the following new Section 7.16 to the 2004-2015 MOU:

7.16 Additional Compensation for Detectives

Effective July 1, 2012, police officers in the assignment of Detective (as defined in Section 7.15) will receive additional compensation in the amount of 2% above the employee's current salary step for the duration of his or her assignment as a Detective.

As positions in the rank of Inspector become vacant and fall to 7, the amount of additional compensation paid to employees under this Section who are assigned to work as Detectives will increase by 1%, totaling 3%.

As positions in the rank of Inspector become vacant and fall to 4, the amount of additional compensation paid to employees under this Section who are assigned to work as Detectives will increase an additional 1%, totaling 4%.

As positions in the rank of Inspector become vacant and fall to 1, the amount of additional compensation paid to employees under this Section who are assigned to work as Detectives will increase an additional 1%, totaling 5%.

Increases will become effective the first pay period following the date on which the increase in additional compensation is due under the provisions above and shall apply only to those employees assigned as Detectives on or after the effective dates.

If the amount of additional compensation paid to police officers assigned to work as a Detective has not reached 5% by June 30, 2017, the amount of additional compensation paid to Detectives will increase to and be set at 5%, regardless of the number of vacancies in the rank of Inspector.

8. Staffing (Effective July 1, 2012 through and including June 30, 2014)

This agreement is intended by the parties to address, in part, the projected deficit faced by the City in its 2012-2013 and 2013-2014 fiscal year budgets. It includes a reduction in monetary compensation to HPOA members of approximately 15% for the period July 1, 2012, through June 30, 2014, saving the City approximately \$9,700,000 over the two fiscal years.

The parties acknowledge that there are structural budget deficit issues with the City's financial future that will take considerable time to address and that these issues relate to both revenue and expenditures.

In consideration of the concessions made by the HPOA in this side letter of agreement, the City agrees to use officer attrition in lieu of officer layoffs to address immediate and potential future cost reductions wherever and whenever financially responsible to do so. In such case, when the City can no longer use officer attrition to achieve immediate and potential future cost reductions, the City will provide notice to the HPOA at the earliest possible opportunity and prior to any potential layoffs.

The City acknowledges the contributions and sacrifices of the HPOA and its members over the last five years to assist the City in balancing its General Fund budget by agreeing to contract concessions.

The City also acknowledges that the HPOA, in order to help avoid additional economic pressure on its members, desires that the City continues to employ not more than 190 sworn, non-command FTE in FY 2013 or FY 2014. The City and HPOA agree that costs savings achieved through officer attrition are critical to balancing the General Fund budget. In doing so, and under these circumstances, the parties understand that several factors (e.g. changes in the economy, the parties' desire to provide effective and quality law enforcement services to all of Hayward, the crime rate, or additional revenue) may influence the exercise of the City's discretion to maintain or fill officer positions either above or below 190.

As the City begins to formulate its FY2015 and FY2016 budgets, the HPOA agrees to meet with the City and discuss any need to address future shortfalls which may impact the delivery of police services to the community.

This agreement does not limit and should not be construed as limiting the City's rights to manage the Police Department as set forth in City of Hayward Personnel Rule 17.05.

9. OPEB Liability

Section 4 Paragraph 6 of the Addendum to the 2004-2015 MOU dated May 8, 2008 regarding OPEB, is deleted and replaced by the following language:

In the 2014-2015 fiscal year 1% of payroll which includes base pay and incentive pays only will be contributed by the City to the retiree medical trust.

In the 2015-2016 fiscal year 1% of payroll which includes base pay and incentive pays only will be contributed by the City to the retiree medical trust.

In the 2016-2017 fiscal year 1% of payroll which includes base pay and incentive pays only will be contributed by the City to the retiree medical trust.

10. Safety Equipment

Section 16.01 of the 2004-2015 MOU regarding issued safety equipment is amended as follows:

Changes reflecting issuance of additional equipment:

From Police Identification Card to Two Police Identification Cards

From Building Key to Building Key/Key Card

From Handcuffs & Case to Two sets of Handcuffs & Cases

From Long Baton Long Baton or Expandable Baton

Changes reflecting equipment no longer issued:

Delete Employee Identification Badge

Delete Short Baton

Delete SWITRS Collision Report Manual

11. Parental Leave

Section 12.05 of the 2004-2015 MOU regarding Parental Leave, is amended to read:

A parent may use up to 80 hours earned sick leave upon the birth of a child or when a child begins residence with an employee who has commenced adoption proceedings with full intent to adopt.

12. Pregnancy and Childbirth

Section 11.06 of the 2004-2015 MOU regarding Pregnancy and Childbirth, is amended to read:

Employees who are disabled from work due to pregnancy, childbirth or a related medical condition are eligible to receive leave during the period of disability in accordance with California's Pregnancy Disability Leave Law (PDLL). Eligible employees may receive up to a maximum of four months of leave under PDLL. Leave under the PDLL is unpaid. An employee on leave under the PDLL shall be entitled to use any accrued and unused sick leave. If all sick leave has been exhausted, the employee may request the use of any accrued and unused vacation leave or compensatory time off. While on PDLL, the City will continue the employee's group insurance benefits at the same level and under the same conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave.

Employees who are disabled from work due to pregnancy, childbirth or a related medical condition will be required to provide medical certification. The medical certification shall include information regarding the probable duration or durations of any period of disability. If an employee on leave under PDLL is also eligible for leave under the Family Medical Leave Act then FMLA will run concurrently with any leave taken under PDLL.

Nothing in this section is intended to conflict with statutory requirements or mandates nor limit the rights of employees under the law.

13. Duration

Section 21.00 Duration of the 2004-2015 MOU is deleted in its entirety and replaced with the following language:

"This Memorandum of Understanding shall continue in full force and effect until; 12:01 a.m. July 1, 2017 and will be renewed from year to year thereafter unless either party shall give written notice to the other of a desire to revise or terminate this Memorandum of Understanding not less than ninety (90) days nor more than one hundred twenty (120) days prior to June 30, 2017 or June 30 of any year thereafter.

This Memorandum of Understanding shall hereafter be referred to as the 2004-2017 MOU.

14. Departmental Policies

The following referenced policy and department order numbers shall be amended as described below:

Section 2.05, Page 5, Paragraph 3: "Department Procedure 3-304" changed to "Department Policy 1051"

Section 4.03, Page 8, Paragraph 8: "Departmental Order 2-401" changed to "Department Policy 216"

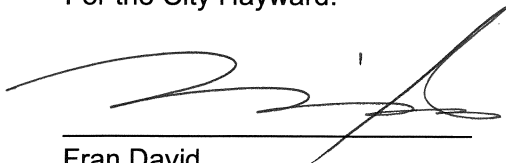
Section 15.01, Page 35, Paragraph 1: "Department Order 3-304" changed to "Department Policy 1051"

Section 17.11, Page 39, Subsection 1: "Departmental Order 2-102" Changed to "Department Policies 340 & 1020"

Section 17.11, Page 40, Subsection 2: "Departmental Order 2-401" Changed to "Department Policy 216"

Executed on this 10th day of May, 2012, at Hayward, California.

For the City Hayward:



Fran David
City Manager

 5/15/12

Fran Robustelli
Human Resources Director

For the Hayward Police Officers' Association:



Michael Sorensen, President
Hayward Police Officers' Association